

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

NOTICE OF MOTION

ANDRE MATHEWS, :

07 CR. 589 (RJS)

Defendant. :

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PLEASE TAKE NOTICE, that upon the annexed affirmation of **ROBERT M. BAUM, ESQ.**, the defendant herein, **ANDRE MATHEWS**, will move before the **HONORABLE RICHARD J. SULLIVAN**, United States District Judge for the Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, New York, on December 20, 2007, for an Order, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, and the United States Constitution, Article I § 8, cl. 3; Article I § 9; the Fifth Amendment; and the Tenth Amendment, dismissing the indictment and granting such other relief as the Court may deem just and proper.

Dated: New York, New York
October 22, 2007

Respectfully submitted,
LEONARD F. JOY, ESQ.
Federal Defenders of New York

By:

ROBERT M. BAUM, ESQ.
Attorney for Defendant
ANDRE MATHEWS
52 Duane Street - 10th Floor
New York, New York 10007

TO: MICHAEL J. GARCIA, ESQ.
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Attn: **David A. O'Neil, ESQ.**
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- V - :

AFFIRMATION

07 Cr. 589 (RJS)

ANDRE MATHEWS :

Defendant. :

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I, Robert M. Baum, hereby affirm under penalties of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an assistant Federal Defender with the Federal Defenders of New York and was previously assigned to represent defendant Andre Mathews in this case.

2. I make this declaration in support of Andre Mathew's motion to dismiss the indictment.

3. All statements herein are made upon information and belief unless otherwise indicated.

4. I have reviewed documents and records provided by the Government and conducted independent investigation into the facts and circumstances surrounding this case.

5. Andre Mathews is charged in the instant indictment with one count of traveling in interstate commerce and knowingly failing to register and update a registration as required by the Sex Offender Registration and Notification Act ("SORNA"), in violation of 18 U.S.C. § 2250. See Indictment, Defense Exhibit A.

6. On December 16, 1985, Andre Mathews was convicted of Sodomy in the first degree, in New York State Supreme Court. On January 6, 1986, he was sentenced to a term of 3 to 9 years incarceration.

7. When Mr. Mathews was released from incarceration and placed on

New York State parole, he was required under New York law to register as a sex offender. He completed a Sex Offender Registration Form on February 14, 1996. Defense Exhibit B.

8. Mr. Mathews registered as a New York City resident, at the intervals required, without incident for approximately ten years.

9. On May 1, 2006, he moved to New Jersey with his nine year old son so that his son, who was diagnosed with Attention Deficit Hyperactivity Disorder, could attend a school in the area. See Defense Exhibit C, lease.

10. On July 27, 2006, the Adam Walsh Child Protection and Safety Act was enacted which (1) contains the Sex Offender Registration and Notification Act; (2) contains the federal failure to register as a sex offender statute, 18 U.S.C. § 2250(a); and (3) establishes a comprehensive national system for the registration of sex offenders.

11. On February 28, 2007, the Attorney General of the United States, promulgated the Interim Rule under authority delegated to him by Congress, specifying that the requirements of SORNA apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of the Act.

12. On July 3, 2007, Andre Mathews was arrested by federal agents for violating the provisions of SORNA. Following his arrest, Mr. Mathews was questioned and acknowledged moving to New Jersey with his son in May, 2006. In April, 2007, he returned to New York and registered at his current address.

WHEREFORE, and on the grounds set forth in the attached Memorandum of Law, it is respectfully requested that this Court enter an Order dismissing the indictment pursuant to Article I, §§ 8 and 9, and the Fifth and Tenth Amendments to the United States Constitution; or in the alternative, grant a hearing on the issues raised, and any further relief

as the Court deems just and proper.

Dated: New York, New York
October 22, 2007

ROBERT M. BAUM, ESQ.